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10/743,255	12/23/2003	Kevin Gerschefske	060012-0307440	4462

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EXAMINER

HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/743,255

Applicant(s)

GERSCHEFSKE ET AL.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 22-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-28 is/are rejected.
- 7) ☒ Claim(s) 23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

  
JEROME W. DONNELLY  
PRIMARY EXAMINER

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 12/23/2003
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 23 is objected to because of the following informalities: the recitation "tensely" as used on line 2 is not clear. Presumably, the coil springs provide a tensile resistance. Appropriate correction is required.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 22-28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of U.S. Patent No. 6,669,609 B2.

Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the claimed limitations are disclosed in claims 1-29 of the patent or would have been obvious to one having ordinary skill in the art at the time the invention was made.

*Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 22-25, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by *Walker* (US Pat. 3,709,487). *Walker* discloses an exerciser comprising a frame assembly 22 including a base structure 23 and an upright structure 44 fixed to the base structure and extending upwardly therefrom; the base structure having downwardly facing surfaces 26 for engaging a horizontal surface in supported relation thereon; and the base structure extending forwardly of the upright structure so that the upright structure cannot be tipped over forwardly except by the entire frame assembly being tipped forwardly about a forward end of the base structure acting as a fulcrum.

An exercising mechanism 110 is carried by the frame assembly (see Fig. 12) selectively extensible by an exercise of a user from an operative position at the upper end portion of the upright structure in a direction tending to tip the upright structure forwardly about the forward end of the base structure acting as a fulcrum and retractable back into the operative position. The exercising mechanism includes a plurality of coil springs 108 embodied in the exercising mechanism so as to resiliently resist the extension of the exercising mechanism by an exercise of the user and resiliently effect the retraction of the exercising mechanism enabling the user to exercise by resisting the retraction.

A bench assembly 24 is configured and operable to be positioned in an operative position to support a user in a prone, supine or sitting position thereon, enabling the user to exercise while in a prone, supine or sitting position thereon. The bench is constructed and arranged to be supported in part on the horizontal surface and in part on the frame assembly at a position such that a part of the weight of the bench assembly and any user supported thereon acts in a direction tending to prevent the entire frame assembly from being tipped forwardly about the forward end of the base structure as a fulcrum.

The coil springs 108 are tensile coil springs which resist in response to elongation thereof. The coil springs are selectively operable to provide selected operative resistance within a range of different operative resistances. The exercising mechanisms include left and right grips 110 connected to left and right coil springs 108 for separately resisting left and right arm exercises by a user. The bench assembly is movable between the first mentioned operative position enabling a user to exercise while sitting or lying prone or supine thereon (Fig. 12 for example) and a second operative position enabling a user to exercise while standing in a position occupied by the bench when in the first position (Fig. 6 for example showing the bench in a different position than shown in Fig. 12). The bench assembly is movable into a third storage position (Figs. 1 and 2 for example).

### *Claim Rejections - 35 USC § 103*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 22-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Fitzpatrick* (US Pat. 4,721,303) in view of *Jorgensen* (US Pat. 6,142,919). *Fitzpatrick* discloses an exerciser (Figs. 1-3) comprising a frame assembly including a base structure 3 and an upright structure 5 fixed to the base structure and extending upwardly therefrom; the base structure having downwardly facing surfaces for engaging a horizontal surface in supported relation thereon; and the base structure extending forwardly of the upright structure so that the upright structure cannot be tipped over forwardly except by the entire frame assembly being tipped forwardly about a forward end of the base structure acting as a fulcrum.

An exercising mechanism 20,21 or 71 is carried by the frame assembly selectively extensible by an exercise of a user from an operative position at the upper end portion of the upright structure in a direction tending to tip the upright structure forwardly about the forward end of the base structure acting as a fulcrum and retractable back into the operative position. The exercising mechanism includes a plurality of stacked weights 10,11 embodied in the exercising mechanism so as to resist the extension of the exercising mechanism by an exercise of the user and effect the retraction of the exercising mechanism enabling the user to exercise by resisting the retraction.

A bench assembly 27 is configured and operable to be positioned in an operative position to support a user in a prone, supine or sitting position thereon, enabling the user to exercise while in a prone, supine or sitting position thereon. The bench is constructed and arranged to be supported in part on the horizontal surface and in part on the frame assembly at a position such that a part of the weight of the bench assembly and any user supported thereon acts in a direction

tending to prevent the entire frame assembly from being tipped forwardly about the forward end of the base structure as a fulcrum.

The exercising mechanism includes left and right pull lines 18,19 and pulling assemblies connecting left and right hand grips 20,21 with left and right weight stacks for separately resisting left and right arm exercises by the user. The bench assembly is movable between the first mentioned operative position enabling a user to exercise while sitting or lying prone or supine thereon and a second operative position enabling a user to exercise while standing in a position occupied by the bench when in the first position. The bench assembly is movable into a third storage position.

*Fitzpatrick* does not disclose the exercising mechanism comprising a plurality of coil springs embodied in the exercising mechanism so as to resiliently resist the extension of the exercising mechanism by an exercise of the user and resiliently effect the retraction of the exercising mechanism enabling the user to exercise by resisting the retraction (claim 22); the coil springs being tensile coil springs which resist in response to elongation thereof (claim 23); the coil springs selectively operable to provide selected operative resistance within a range of different operative resistances (claim 24); the left and right hand grips connected to left and right coil springs (claim 25); and left and right pull lines and pulling assemblies connecting the left and right hand grips with left and right coil springs, respectively (claim 26).

*Jorgensen* discloses an exerciser comprising an exercising mechanism including a plurality of tensile elastic resistance members 8. The elastic resistance members are selectively operable to provide a selected operative resistance within a range of different operative resistances. A pull line 17 and pulling assembly connects a hand grip 18 with the elastic

resistance member. The elastic resistance members may be made as coil springs (col. 4, lines 55-57) and substitute for weight resistance (col. 4, lines 58-63). *Jorgensen* therefore teaches the equivalence of coil spring exercise resistance with weight-based exercise resistance and that the use of elastic resistance members provide advantages over weight resistance in that the exercise device can be made more compact and light-weight with virtually noiseless operation and ready adjustability to different degrees of tension (col. 1, lines 21-28).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the weight plates of *Fitzpatrick* with a plurality of coil springs, since *Jorgensen* teaches that coil springs can be substituted for weights and that elastic resistance members, such as coil springs, provide an exercise device that is more compact, light-weight, virtually noiseless, and adjustable to different degrees of resistance.

### *Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Wilkin* (US Pat. 3,851,874) and *Cassidy et al.* (US Pat. 5,941,807) disclose the equivalence of weights and coil springs.

*McBride* (US Pat. 6,585,626 B2) and *McBride* (US Pat. 6,595,905 B2) disclose exercise apparatus comprising a frame assembly including a base structure and upright structure; resilient exercising mechanism; and bench assembly supported by the frame assembly and the underlying horizontal support.



9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory L. Huson can be reached on (571) 272-4887.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Victor K. Hwang  
July 18, 2005

JEROME W. DONNELLY  
PRIMARY EXAMINER

